Supreme Court, U.S.
FILED

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No. ____

In The
Supreme Court of the United States
October Term, 1996

JOANNE BRITO BOYCE, et al.,
Petitioner

V.

JOHN W. GREENWAY,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTION PRESENTED

Whether the court of appeals erred in holding that a motorboat is not a "motor vehicle" within the meaning of the exception to dischargeability in bankruptcy of a damages judgment for death and injuries caused by unlawfully driving a motor vehicle while intoxicated set forth in 11 U.S.C. § 523(a)(9).

LIST OF PARTIES

1. **Petitioners are:**

   a) **Joanne Brito Boyce**

   b) **Eric Boyce**

   c) **John W. Sommerfield**

   d) **Terry Rock**

   e) **Anita Kay Rock, Individually and as Representative of the Estate of Deborah Rock**

2. **Respondent is John Greenway**

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED ii

LIST OF PARTIES iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES v

STATEMENT OF JURISDICTION 2

STATUTES INVOLVED 2

STATEMENT OF THE CASE 3

ARGUMENT 8

CONCLUSION 23

CERTIFICATE OF SERVICE 24

TABLE OF AUTHORITIES

CASES PAGE

Avito v. Cardona (In re Cardona), 50 B.R. 596 (Bankr. S.D.Fl. 1985) 20

Bradley v. Guy, 438 So.2d 854 (Fla. App. 1983) 22

Brewer v. State, 143 S.W.2d 599, 601 (Tex. Crim. App. 221940) 22

Conroy v. Aniskoff, 507 U.S. 511 (1993) 14

Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982) . 16

Green v. Ross, 338 F.Supp. 365 (S.D. Fla. 1972) 22

Hazelip v. Horridge (In re Horridge), 127 B.R. 789 (S.D.Tex. 1991) 20

In re Callaway, 41 B.R. 341, 345 (Bankr. E.D. Penn. 1984) 20

In re Greenway, 180 B.R. 179 (W.D. Tex. 1995) 5,9

In re Greenway, 71 F.3d 1177 (5th Cir. 1996) 2,5

In re Hudson, 859 F. 2d 1418, 1423 (9th Cir. 1988) 16

In the Matter of Wooten, 30 B.R. 357 (Bankr. N.D. Ala. 1983) 20

Massachusetts v. Morash, 409 U.S. 107 (1989) 14

Radivoj v. Williams [In re Williams], 101 B.R. 356 (Bankr. S.D. Fla 1989) 10

United States v. Ron Pair Enterprises, 489 U.S. 235 (1989) *16*

Vetrano v. Aetna Life & Casualty, 612 S.W.2d 689 (Tex.Civ.App. — Houston [14th Dist.] 1981, no writ) 18,19

Williams v. Radivoj, 111 B.R. 361 (S.D. Fla. 1989) 10,11

Willison v. Race [In re Race], 159 B.R. 857 (Bkrtcy.W.D. Mo. 1993) 10,11,12,13

Other Authorities

11 U.S.C. §523(a)(6) 5

11 U.S.C. §523(a)(9) ..... *passim*

Black's Law Dictionary 21

Federal Judgeship Act of 1984, Pub. L. No. 98-353, 1984 U.S. Code Cong. and Admin. News (98 Stat.) 587 17

S.Rep. No. 101-434, 101st Cong. 2nd Sess. 3-4 (1990) reprinted in 1990 U.S. Code Cong. & Admin. News 4069 20

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V.

JOHN W. GREENWAY,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

COME NOW Petitioners Joanne Brito Boyce, Eric Boyce, John Sommerfield, Terry Rock, Kay Rock, and the Estate of Deborah Rock (Kay Rock as Representative) and request that a writ of certiorari be issued to review the opinion and judgment of the United States Court of Appeals for the Fifth Circuit in this cause, and as grounds for review by writ of certiorari Petitioners would respectfully show the Supreme Court the following:

STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction of this case under 28 U.S.C. § 1254(1).

This is an appeal from a judgment of the Fifth Circuit reversing a judgment of the United States District Court for the Western District of Texas, Austin Division, affirming in part and reversing in part a final judgment of the Bankruptcy Court for the Western District of Texas, Austin, Division. The Fifth Circuit rendered its opinion and judgment on January 10, 1996, in Cause No. 95-50309, *Boyce v. Greenway* (*In re Greenway*), 71 F.3d 1177 (5th Cir. 1996).

STATUTE INVOLVED

The pertinent provision of the Bankruptcy Code, 11 U.S.C §§ 523(a)(9) states the following:

> **§ 523. Exceptions to Discharge**
>
> A discharge under ... this title does not discharge an individual debtor from any debt —
>
> ***
>
> (9) for death or personal injury caused by the debtor's operation

> of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance; ***.
>
> (9) for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance; ***.

STATEMENT OF THE CASE

I. Proceedings In The Courts Below

Petitioners Joan Brito Boyce, et al. (hereinafter "Plaintiffs") filed this complaint as an adversary proceeding on January 24, 1994, in Case No. 93-12864, in the United States Bankruptcy Court for the Western District of Texas, Austin Division. (R. 107)[1] Plaintiffs are contesting the alleged dischargeability of a debt incurred by the Respondent, Debtor John Greenway ("Greenway"), as the result of a civil judgment rendered on April 5, 1993,

1 The notation "R" refers to the record in this case. The record has been remanded to the custody of the district clerk.

for $617,462.61 in damages in a state court lawsuit styled *Eric Boyce, et al. v. John Greenway, et al.*, Cause No. 475,857, in the 201st District Court of Travis County, Texas. (R. 111) The state court lawsuit was brought against Greenway for the wrongful death of Deborah Rock and the personal injuries and damages suffered by the Plaintiffs as a result of a motorboat collision on the night of June 30, 1989, on Lake Austin, a narrow waterway near Austin, Texas, which is part of the Colorado River.

The Plaintiffs contest Greenway's attempt to evade the state court judgment through bankruptcy based on the statutory exception to the dischargeability of certain types of judgment debts under 11 U.S.C. § 523(a)(9). Greenway filed a motion for summary judgment on the dischargeability issues. The Plaintiffs filed a response to the motion, with extensive evidentiary attachments, including the state court judgment. (R. 186-330) On June 1, 1994, the bankruptcy court (Judge Frank Monroe) granted Greenway's motion for summary judgment on the § 523(a)(9) issue. (R. 392)

The Plaintiffs appealed to the district court. (R.

376) The district court reversed the bankruptcy court's ruling with respect to § 523(a)(9). (R. 91) See *Boyce v. Greenway (In re Greenway)*, 180 B.R. 179 (W.D. Tex. 1995).

Greenway appealed to the appellate court. On January 10, 1996, the Fifth Circuit reversed the District Court by its opinion and judgment in *Boyce v. Greenway (In re Greenway)*, 71 F.3d 1177 (5th Cir. 1996)[2].

II. Statement Of Facts

On June 30, 1989, Deborah Ann Rock, Eric Boyce, John Sommerfield, and Joanne Brito were sitting in an idle motorboat approximately one-fourth of a mile south of the Loop 360 Bridge on Lake Austin in Travis County, Texas. The boat was owned and operated by Eric Boyce. (R. 241)

Suddenly and unexpectedly, a 21-foot Supra Saltare, a high-powered motorboat driven by John Greenway, crashed into the Boyce boat. Greenway's boat

2 As part of the adversary proceeding, Plaintiffs also challenged the dischargability of the judgment debt under 11 U.S.C. § 523(a)(6). The Bankruptcy Court granted summary judgment to Defendant Greenway on this statute as well, and this ruling was affirmed by both the District Court and the Court of Appeals. Petitioners are not appealing the Court of Appeals decision with regard to § 523(a)(6).

was traveling at least 30 miles per hour at the time of the collision. The speed was great enough that the large motorboat went up over the top of the Boyce boat, and while airborne, the motor's propeller struck and repeatedly cut through Deborah Rock's body, causing her death, and also slashed the leg of Joanne Brito, injuring her severely. Eric Boyce and John Sommerfield also sustained lesser injuries. (R. 240-5, 254-9, 267-72, 316-7)

Greenway, then 23,[3] had spent most of the afternoon driving his family's Supra speedboat on the lake, water-skiing and drinking beer with friends. He had at least three beers in a two-hour period while driving the boat for skiers. After the water-skiing, Greenway drove his friends by boat to a bar called Jazz On The Lake, where Greenway had at least two "Hurricanes," strong mixed drinks containing several types of liquor. (R. 223-7, 230-1, 285-90, 295, 310-4, 316-7)

Greenway and his friends then left Jazz On The Lake to go to **another bar** further up the lake. As he was speeding up the darkened lake, Greenway ran into and

3 John Greenway is now an attorney practicing law in Austin, Texas.

over the Boyce boat. (R. 316-7)

Greenway was charged with criminally negligent homicide. *State of Texas v. John Greenway*, Cause No. 330,167, in the County Court of Law No. Seven of Travis County. He pleaded no contest and received a probated sentence. (R. 321) The transcript of the preliminary hearing in the criminal case is part of the record here. (R. 275-320) Evidence that Greenway was intoxicated at the time of his collision with the Boyce boat was presented in both the criminal case and the state court civil lawsuit. (R. 285-90, 295, 310-4, 318) An expert affidavit on that issue was also filed independently in this case by Sam Bivone, a former Austin Police Department chemist and toxicologist who performed a blood/alcohol test on Greenway about two hours after the collision. (R. 197-203)

At the trial of the state court damages suit, Greenway was found negligent and was assigned 60% of the responsibility for the collision.[4] The jury was not asked and did not directly pass on the question of whether

4 The other 40% of causation was attributed to Eric Boyce, who Greenway claimed did not have his lights on as his boat lay idle in the water prior to the collision. The other Plaintiffs settled their claims against Boyce during the trial of the state court suit.

Greenway was intoxicated.

The state trial court rendered judgment for the Plaintiffs against Greenway in Cause No. 475,857. (R. 211-6) The court assessed most of the court costs against Greenway, saying it was "by reason of the Court's view of the evidence concerning his consumption of alcohol immediately prior to the accident and the speed at which he drove his boat on Lake Austin on the night of June 30, 1989." (R. 216)

On October 25, 1993, Greenway filed for protection from the judgment under Chapter 7 of the bankruptcy laws. (R. 151) Plaintiffs then filed this adversary proceeding, seeking a determination of non-dischargeability of the judgment under 11 U.S.C. § 523(a)(9).

ARGUMENT

I. The court of appeals erred in holding that a motorboat is not a "motor vehicle" within the meaning of the exception to dischargeability for a judgment based on death and injuries caused by unlawfully driving a motor vehicle while intoxicated in § 523(a)(9).

A. The plain meaning of the statutory language mandates non-dischargeability of judgments based on drunk driving of motorboats

The various sub-sections of 11 U.S.C. § 523 provide that certain types of debts, by reason of the nature of the conduct involved in incurring them or some other overriding public policy interest, shall *not* be discharged in the event of a debtor's bankruptcy. Section 523(a)(9) states in pertinent part as follows:

> A discharge under ... this title does not discharge an individual debtor from any debt —
>
> ***
>
> (9) for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance; ***.

The appellate court's decision here is only the fourth reported case construing this exception to discharge with respect to liability arising from the operation of a motorboat while intoxicated. See *Boyce v. Greenway (In re Greenway)*, 180 B.R. 179 (W.D. Tex. 1995). (As the

district court noted, Greenway does not contest on appeal that driving a motorboat while intoxicated was unlawful at the time; nor does he challenge the existence of a fact issue as to his intoxication. *Id.* at 181.) In the leading case on this issue, a motorboat was held (by both the bankruptcy court and the district court) to be a "motor vehicle" within the meaning of § 523(a)(9). *Radivoj v. Williams* [*In re Williams*], 101 B.R. 356 (Bankr. S.D. Fla 1989), *aff'd, Williams v. Radivoj*, 111 B.R. 361 (S.D. Fla. 1989). In another case, a bankruptcy court held just the opposite. *Willison v. Race* [*In re Race*], 159 B.R. 857 (Bkrtcy.W.D. Mo. 1993). The Fifth Circuit opinion is the only circuit opinion interpreting § 523(a)(9).

The construction of the statute in *Williams*, which the appellate court disagreed with, offers the better reasoning in light of both the plain meaning and the intent and purpose of the federal non-dischargeability statutes.

The facts in *Williams* were remarkably similar to the present case. A state court rendered a judgment against the debtor Williams based on a jury verdict in a lawsuit arising out of an after-dark collision of two mo-

torboats, in which the plaintiff Radivoj's husband and one other person were killed and several others were injured. The defendant/debtor had consumed several beers and mixed drinks prior to the collision, but had not been tested for blood/alcohol content; the determination that he was intoxicated at the time of the collision was based on eyewitness and expert testimony. *Williams* at 357-8. In holding that the judgment debt was non-dischargeable, the bankruptcy court stated:

> In this context the Court finds little distinction between a highway, an airway, and a waterway, or between an automobile, an airplane, and a boat. . . . The applicable definition is the intent of Congress in framing the wording of the statute, ... A motorboat is a motor vehicle within the meaning of section 523(a)(9).

Id. at 358. Petitioners urge the Supreme Court to adopt this reasoning.

Respondent Greenway would urge this Court to affirm the appellate court Fifth Circuit and adopt the competing reasoning first articulated by the Missouri bankruptcy judge in *Willison v. Race*, that "the term

'motor vehicle' does not include a motorboat." *Race*, at 861. However, the court in *Race* acknowledged that its construction of the law was harsh and "unfortunate" and that the result was "wrong" from the standpoint of justice. *Id.* at 861-2. In the present case, the bankruptcy judge reiterated this at the summary judgment hearing, saying he was following *Race* "regretfully" and that the Plaintiffs should appeal his decision. (TR 41)

The court in *Race* relied largely on a definition of "motor vehicle" in federal highway safety acts as being limited to vehicles designed principally for use on the public *highways*. But in enacting those specific *highway* safety laws, the Congress apparently felt it necessary to define the term "motor vehicle" to *limit* its meaning *in that context*.[5] By contrast, the term "motor vehicle" as used in the Bankruptcy Code is not limited nor defined in any way, thereby suggesting that it is to be used in a broad, unrestricted way that is logically consistent with

5 The highway-safety statute's definition of "motor vehicle" on which the court in *Race* relied also expressly defined "motor vehicle" as *excluding* vehicles on rails. If Congress had not so limited the statute, the broad term "motor vehicle" would presumably have included trains, even though they do not travel on the *highways*.

the purpose and intent of the non-dischargeability statutes.

The narrow construction of § 523(a)(9) adopted in *Race* would have the clearly unintended effect of leaving victims of drunk motorboat drivers uncompensated, and would permit an arbitrary sub-class of drunk-driving debtors to race to the bankruptcy courts for automatic exoneration from negligence judgments against them. Such an unfortunate result cannot be divined from, and certainly is not mandated by, any of the language of § 523(a)(9). As even the court in *Race* acknowledged, the term "vehicle" refers generally to any means of "conveyance." *Id.* at 860. Certainly the word "vehicle" broadly describes all forms of *human* conveyance and transportation — cars, buses, trains, airplanes, boats, tractors, bicycles, etc. In § 523(a)(9), the only modifier is "motor," excluding only bicycles and other non-motor vehicles from its reach.

B. Interpreting Section 523 "as a whole" requires non-dischargeability of judgments based on drunk driving of motorboats

The cardinal rule in interpreting a statute is that the statute is to be read as a whole, because the meaning of statutory language, plain or not, depends on context. *Conroy v. Aniskoff*, 507 U.S. 511, 515 (1993) *Massachusetts v. Morash*, 409 U.S. 107, 115 (1989). Since the term "vehicle" in § 523(a)(9) is modified *only* by the word "motor," the statute clearly does not include bicycles, wagons, canoes, rowboats, or other non-motorized vehicles. But there is **nothing** in the language of the statute to suggest that it is limited to "wheeled vehicles" or "land vehicles," or even more narrowly to "cars and trucks on the highway." The simple, broad term "*motor* vehicle" plainly includes ***motor** boats* along with all other ***motor**-powered **vehicles.***

Congress should not have to provide the courts with a laundry list of "included" motor vehicles in order for it to be determined that the statute encompasses them; in the absence of any limiting definition or expression to

the contrary, the courts should read the statute broadly, exactly as it was written, and assume that ***all*** motor vehicles are included in its coverage.

At the very least, the courts should not reach for a construction which would result in the unwarranted discharge of debts incurred by the intoxicated driving of *any* motor vehicle unless it would be unreasonable, inconsistent, or absurd to construe the language of the statute otherwise. There is nothing unreasonable or inconsistent, let alone absurd, about broadly construing § 523(a)(9) to encompass non-dischargeability of debts incurred by drunken driving of high-powered speedboats on public waterways like Lake Austin. This interpretation is logically consistent with the purpose behind the non-dischargeability laws set out in § 523.

The court of appeals erred in failing to conclude, from the plain language of the statute, that a motorboat *is* a "motor vehicle" within the meaning of § 523(a)(9).

II. The Literal Application of the Fifth Circuit's Interpretation of "Motor Vehicle" Is at Odds With the Intent of the Drafters

A. The Fifth Circuit's interpretation of "motor vehicle" is in conflict with congressional intent in enacting §523(a)(9)

Even if the Fifth Circuit is correct in its interpretation of the "plain meaning" of the §523(a)(9), the appellate court should still be reversed, because the plain meaning rule is not conclusive in cases were "the literal application of a statute will produce a result demonstrably at odds with the intentions of the drafters." *United States v. Ron Pair Enterprises*, 489 U.S. 235, 242 (1989), *citing Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982).

The federal courts have previously pointed out that in enacting § 523(a)(9), Congress intended: (1) to deter drunk driving; (2) to ensure that those who are held liable for injuries caused by driving while intoxicated cannot escape that liability through the bankruptcy laws; and (3) to protect victims of alcohol-related collisions. *In re Hudson*, 859 F.2d 1418, 1423 (9th Cir. 1988). All three of these intended consequences can only be advanced by

according § 523(a)(9) a broad construction, one that recognizes the term "motor vehicle" to include all kinds of motorized vehicles driven by the public, the intoxicated driving of which creates a risk of serious injury or death to other persons. The Plaintiffs in this case are in the class of persons — and creditors — whom § 523(a)(9) was designed to protect.

To excuse from the non-dischargeability mandate the intoxicated drivers of high-speed motorboats would leave an arbitrary class of victims unprotected and an arbitrary class of drunken drivers freed of liability to their victims. Following the narrow construction offered by the appellate court here, the application of § 523(a)(9) would rest not on the fact that the debtor was driving while intoxicated, but rather on what kind of motor vehicle he was driving. This would lead to results wholly inconsistent with the stated intent of the Congress, which was "to ensure that victims of the drunk driver do not have their judgments against the drunk driver discharged in bankruptcy." Federal Judgeship Act of 1984, Pub. L. No. 98-353, 1984 U.S. Code Cong. and Admin. News (98

Stat.) 587 (remarks of Senator Dole).

Even assuming that the unlimited term "motor vehicle" is ambiguous with respect to the inclusion of motorboats, that ambiguity should be resolved in favor of the non-dischargeability of a judgment resulting from alcohol-related wrongful death and personal injuries. In *Vetrano v. Aetna Life & Casualty*, 612 S.W.2d 689 (Tex.Civ.App. — Houston [14th Dist.] 1981, no writ), the court considered the meaning of the word "vehicles" as applied to motorboats in the context of a homeowner's insurance policy that insured personal property against loss by "aircraft or vehicles." The insured had lost personal property when his motorboat capsized. Since the policy elsewhere defined the terms "motor vehicle" and "watercraft," the insurer argued that the undefined term "vehicles" clearly did not include boats. But the court concluded that the word "vehicles" was ambiguous or uncertain in meaning, and that it was error to hold as a matter of law that a motor boat was not a "vehicle" under the policy:

> [I]t seems to us that it could be argued just as logically that if the insurance company had intended to insure against loss only by land motor vehicles, the policy would have expressly so limited the coverage and would not have provided coverage of a loss by vehicles without any qualification whatsoever.

Id. at 691.

The same can be said of § 523(a)(9). If Congress had intended to limit the scope of this section to non-dischargeability of debts for deaths and injuries caused by drunk driving of "land motor vehicles," it could have said so. But it said "motor vehicles" without limitation. The literal application of the appellate court's interpretation of § 523(a)(9) will produce a result "demonstrably at odds with the intentions" of the statute's drafters.

B. Non-dischargeability serves the purposes behind the Bankruptcy Code

The provisions set out in § 523(a) are exceptions to the general rule allowing dischargeability of debts in bankruptcy. One purpose behind the Bankruptcy Code

generally is to give insolvent debtors a "fresh start". S.Rep. No. 101-434, 101st Cong. 2nd Sess. 3-4 (1990) *reprinted in* 1990 U.S. Code Cong. & Admin. News 4069. But "[b]ankruptcy was never meant to be a shield behind which drunk drivers, and others who have acted in a reckless manner, can absolve themselves of liability. The concept of the fresh start for a debtor must defer to the possibility of a fresh start for the innocent victim." *In the Matter of Wooten*, 30 B.R. 357 (Bankr. N.D. Ala. 1983). See also *In re Callaway*, 41 B.R. 341, 345 (Bankr. E.D. Penn. 1984).

The very nature of § 523(a)(9) dictates that a debtor not be allowed a "fresh start" from debts brought about by killing or injuring others through drunk driving. Entitlement to a discharge of the debtor's liability through bankruptcy proceedings is not a property right, but a statutory privilege created by Congress. *Hazelip v. Horridge (In re Horridge)*, 127 B.R. 789 (S.D. Tex. 1991). *See also Avito v. Cardona (In re Cardona)*, 50 B.R. 596 (Bankr. S.D. Fl. 1985). Greenway waived that privilege when he deliberately became intoxicated and operated a motorboat at a high rate of speed on a well-traveled public

waterway at night. Under these circumstances, it is far more appropriate that the injured Plaintiffs be assured the right of compensation than that a "fresh start" be given to Greenway, whose highly irresponsible actions caused their suffering. Adopting the meaning given to "motor vehicles" by the court of appeals will produce a result demonstrably at odds with the intentions of the drafters.

C. A motor boat is a dangerous instrumentality which should be classified as a motor vehicle under § 523(a)(9) as a matter of public policy

The difference between motorboats and automobiles is immaterial with regard to the deaths, injuries, and tragic losses suffered by victims of drunk drivers. What is material and important is that both motorboats and automobiles are dangerous when placed in the hands of an intoxicated operator. They then become dangerous instrumentalities.

A dangerous instrumentality may be defined as:

> **Anything which has the inherent capacity to place people in peril**, either in itself (e.g. dynamite), or **by a careless use of it**

> **(e.g. boat)**. . . Due care must be exercised in using to avoid injury . . .

Black's Law Dictionary 394 (6th ed. 1991).

Due to its very nature, a motorboat is held by some courts to be a dangerous instrumentality. See *Green v. Ross*, 338 F.Supp. 365 (S.D. Fla. 1972); *Bradley v. Guy*, 438 So.2d 854 (Fla. App. 1983). In Texas, an automobile has been held not to be a dangerous instrumentality *per se*, but when placed under the control of an intoxicated driver, the results are so uncertain that the vehicle becomes a dangerous instrumentality. *Brewer v. State*, 143 S.W.2d 599, 601 (Tex. Crim. App. 1940).

Regardless of what type of motor vehicle is involved, when a drunk driver gets behind the wheel of a dangerous instrumentality, that driver should remain accountable for the damages he causes.

In light of the stated intent of Congress, the message should be that driving while intoxicated will not be tolerated, regardless of what type of motor vehicle is involved. This Court should reverse the judgment rendered by the Fifth Circuit under § 523(a)(9).

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Petitioners Joanne Brito Boyce, Eric Boyce, John Sommerfield, Terry Rock, Kay Rock, and the Estate of Deborah Rock (Kay Rock, Representative), pray that the Supreme Court grant their Petition for Writ of Certiorari, and that upon final hearing, the Supreme Court reverse the judgment of the appellate court below; and that the Court grant Petitioners such other and further relief, at law or in equity, to which they may show themselves justly entitled.

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App. 1

In the Matter of John W. GREENWAY, Debtor.

Joanne Brito BOYCE; Eric Boyce; John Sommerfield; Terry Rock; Kay Rock, For Representatives of the Estate of Debbie Rock, Appellees Cross-Appellants,

v.

John W. GREENWAY, Appellant Cross-Appellee.

No. 95-50309 Summary Calendar

United States Court of Appeals
Fifth Circuit

January 10, 1996

Creditors who had obtained prepetition state court judgment against Chapter 7 debtor for wrongful death and personal injuries caused by debtor's operation of a motorboat while intoxicated brought adversary proceeding to except resulting judgment debt from discharge. Appeal was taken from the bankruptcy court's order granting summary judgment for debtor, and the United States District Court for the Western District of Texas, James R. Nowlin, J., 180 B.R. 179, affirmed in part and reversed in part. Parties appealed. The Court of Appeals held that: (1) motorboat is not a "motor vehicle" within the meaning of discharge ex-

ception for debts arising from the intoxicated operation of a motor vehicle, and (2) jury's refusal to find in state court action that debtor acted with gross negligence collaterally estopped creditors from litigating whether debtor's actions fell within will and malicious injury exception to discharge.

Affirmed in part and reversed in part.

Appeals from the United States District Court for the Western District of Texas.

Before HIGGINBOTHAM, DUHE and EMILIO M. GARZA, Circuit Judges.

OPINION: PER CURIAM:

Defendant John W. Greenway appeals the district court's partial reversal of the bankruptcy court's order granting Greenway's motion for summary judgment. Plaintiffs Joanne Brito Boyce, Eric Boyce, John Sommerfield, Terry Rock, Kay Rock, and the Estate of Debbie Rock cross-appeal the district court's partial affirmance of the bankruptcy court's order granting Greenway's motion for summary judgment. We reverse in part, affirm in part, and render judgment.

I

A motorboat, operated by John Greenway, crashed into Plaintiffs' vessel, causing a fatality and

various injuries. The accident occurred on a lake at night. Greenway had been drinking. Plaintiffs sued in state court, and a jury, finding that Greenway was sixty percent responsible for the accident, awarded the Plaintiffs damages proportional to Greenway's fault. [1] Unable to pay the judgment, Greenway sought protection under Chapter 7 of the Bankruptcy Code. The Plaintiffs commenced this adversary proceeding in the bankruptcy court to block the discharge of Greenway's debt. The Bankruptcy Code does not allow the discharge of debts arising from, among other things, willful and malicious injuries,[2] or from death or personal injuries caused by the operation of a "motor vehicle" if that operation was unlawful due to the debtor's intoxication.[3] The Plaintiffs argued that these two provisions barred the discharge of Greenway's debt. The bankruptcy court disagreed. Because the jury in Greenway's state trial had rejected liability for gross negligence, the bankruptcy court found the Plaintiffs collaterally estopped from litigating whether Greenway's actions were will-

1 The jury found Plaintiffs forty percent responsible for the accident, and under Texas comparative negligence rules, compensated Plaintiffs for only sixty percent of the total value of their injuries.

2 See 11 U.S.C. § 523(a)(6) (exempting from discharge any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity").

3 See 11 U.S.C. § 523(a)(9) (exempting from discharge any debt incurred "for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance").

ful or malicious under 11 U.S.C. § 523(a)(6). The bankruptcy court further found that the plain meaning of the term "motor vehicle," in 11 U.S.C. § 523(a)(9), did not include motorboats, and held § 523(a)(9) inapplicable to Greenway's case. The bankruptcy court thus granted Greenway's motion for summary judgment. On appeal, the district court affirmed the bankruptcy court's finding that the Plaintiffs were collaterally estopped from litigating whether Greenway's actions had been willful and malicious, but reversed the bankruptcy court's interpretation of the term "motor vehicle," reading the term to include motorboats. The district court then remanded the case to the bankruptcy court for trial on whether Greenway was intoxicated, within the meaning of § 523(a)(9) of the Bankruptcy Code, when the accident occurred.[4] Both Plaintiffs and Greenway filed timely notices of appeal.

II

The Bankruptcy Code allows a debtor to discharge all debts incurred prior to filing for bankruptcy, subject to certain exceptions. 11 U.S.C. § 727(b); Citizens Bank & Trust Co. v. Case (In re Case), 937 F.2d 1014, 1024 (5th Cir. 1991). Greenway appeals the district court's reading of the exception contained in § 523(a)(9) of the Bankruptcy Code involving the in-

4 In the state court proceeding, the jury made no finding as to Greenway's possible intoxication.

toxicated operation of a "motor vehicle." We review a district court's interpretation of the Bankruptcy Code de novo. Bruner v. United States (In re Bruner), 55 F.3d 195, 197 (5th Cir.1995).

As with any statutory question, we begin with the language of the statute. Kellogg v. United States (In re West Texas Marketing Corp.), 54 F.3d 1194, 1200 (5th Cir.), cert. denied, ___ U.S. ___ , 116 S. Ct. 523, L. Ed. 2d ___ (1995). In determining a statute's plain meaning, we assume that, absent any contrary definition, "Congress intends the words in its enactments to carry their ordinary, contemporary, common meaning." Pioneer Investment Services v. Brunswick Associates, 507 U.S. 380, ___ , 113 S. Ct. 1489, 1495, 123 L. Ed. 2d 74 (1993) (internal quotation marks omitted). As the Supreme Court has stated: "There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571, 102 S. Ct. 3245, 3250, 73 L. Ed. 2d 973 (1982) (internal quotation marks omitted). If the language is clear, then "the inquiry should end." United States v. Ron Pair Enterprises, 489 U.S. 235, 241, 109 S. Ct. 1026, 1030, 103 L. Ed. 2d 290 (1989).

The terms "motorboat" or "water craft" do not appear in § 523(a)(9) of the Bankruptcy Code. Nor does

the Bankruptcy Code expressly define the term "motor vehicle." Therefore, we must determine if the plain or common meaning of the term "motor vehicle," as used in § 523(a)(9), includes motorboats.[5] Only if the term is ambiguous will we proceed beyond the language as written. Ron Pair Enterprises, Inc., 489 U.S. at 241, 109 S. Ct. at 1030. The dictionary defines "motor vehicle" as "an automotive vehicle not operated on rails; esp: one with rubber tires for use on highways." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 775 (1986); see also RANDOM HOUSE COLLEGE DICTIONARY 871 (revised ed. 1980) (defining "motor vehicle" as "any transportation vehicle designed for use on highways, as an automobile, bus, or truck"). Additionally, Congress has used "motor vehicle" to refer exclusively to automobiles in other statutes. For example, Chapter 301 of the Transportation Code defines "motor vehicle" as "any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads and highways, but does not

5 We note that "11 U.S.C. § 523(a)(9) was enacted without any reported legislative history." Thomas v. Ganzer (In re Ganzer), 54 Bankr. 75, 76 (Bankr.D.Minn.1985). Whether § 523(a)(9) bars the discharge of debts arising from the intoxicated operation of a motorboat is an issue of first impression in this circuit. The only two other reported cases addressing the issue reached opposite results. Compare Radivoj v. Williams (In re Williams), 101 Bankr. 356, 358 (Bankr.S.D.Fla.1989) aff'd, 111 Bankr. 361 (S.D.Fla.1989) (holding that § 523(a)(9) of the Bankruptcy Code includes motorboats) with Willison v. Race (In re Race), 159 Bankr. 857, 860-61 (Bankr.W.D.Mo.1993) (holding that § 523(a)(9) does not include motorboats).

include a vehicle operated only on a rail line." 49 U.S.C. § 30102(a)(6).[6]

The above definitions comport with our understanding that the plain and common meaning of the term "motor vehicle" does not include motorboats. Had Congress intended to include motorboats within § 523(a)(9), they would have either defined the term "motor vehicle" to include motorboats or added motorboats to the exception. It is not the job of the courts to legislate, and the Supreme Court has counseled that where the statutory language is plain, "the sole function of the court is to enforce it according to its terms." Ron Pair Enterprises, Inc., 489 U.S. at 241, 109 S. Ct. at 1030 (internal quotation marks omitted). The district court erred in reading the term "motor vehicle" in § 523(a)(9) of the Bankruptcy Code to include motorboats.[7] See Willison v. Race (In re Race), 159 Bankr. 857, 860-61 (Bankr.W.D.Mo.1993) (resisting the urge

6 In addition, we note that Congress consistently refers to motor vehicles and water craft separately in its enactments. See, e.g., 31 U.S.C. § 1344(g)(1) (defining "passenger carrier" to mean "passenger motor vehicle, aircraft, boat, ship, or other similar means of transportation"); 16 U.S.C. § 1133(c) (discussing the use of "motor vehicles, motorized equipment, and motorboats"); 22 U.S.C. § 4304a(a)(2) (setting insurance requirements for "motor vehicles, vessels, and aircraft").

7 We reject the plaintiffs contention that we should parse the term "motor vehicle" into its component parts, thereby defining the term as any "vehicle" or "conveyance" that is powered by a mechanized motor. Such a technical definition of the term "motor vehicle" would result in including within the statute motorized wheelchairs, golf carts, riding lawn mowers, and perhaps even certain children's toys. Reading the term in this way would be overbroad, and would not comport with the Supreme Court's view that

"to give effect to a perceived goal of Congress" and holding that the plain language of § 523(a)(9) does not include motorboats). Accordingly, we hold that § 523(a)(9) does not encompass motorboats, and therefore does not bar the discharge of Greenway's debt.[8]

III

Plaintiffs argue that the district court erred in upholding the bankruptcy court's ruling that Plaintiffs were collaterally estopped from litigating whether Greenway's actions were willful and malicious under § 523(a)(6) of the Bankruptcy Code, a finding which would disallow the discharge of Greenway's debt. The preclusive effect of a state court judgment is a question of law that we review de novo. Garner v. Lehrer (In re Garner), 56 F.3d 677, 679 (5th Cir.1995). A state court judgment's preclusive effect on a subsequent federal action is determined by the full faith and credit statute, which provides that state proceedings "shall have the same full faith and credit in every court within the United States ... as they have by law or usage in the courts of such State ... from which they are taken." 28 U.S.C. § 1738; Marrese v. American Academy of

8 Our conclusion is also supported by the fact that we are bound to construe the exceptions contained in § 523 of the Bankruptcy Code narrowly and in favor of the debtor. See Citizens Bank & Trust Co. v. Case (In re Case), 937 F.2d 1014, 1024 (5th Cir. 1991) ("Any exception to the general discharge of a debtor's debts is strictly governed by the Code and construed narrowly in favor of the debtor and against the creditor requesting the determination.").

Orthopedic Surgeons, 470 U.S. 373, 380, 105 S. Ct. 1327, 1331-32, 84 L. Ed. 2d 274 (1985). Under this statute, we must look to the rules of preclusion of the state in which the judgment was rendered in order to determine the judgment's preclusive effects. Marrese, 470 U.S. at 380, 105 S. Ct. at 1332. Because Greenway's state judgment was entered by a Texas court, we apply Texas preclusion rules. Garner, 56 F.3d at 679.

Under Texas law, "collateral estoppel bars relitigation of any ultimate issue of fact actually litigated and essential to the judgment in a prior suit." Bonniwell v. Beech Aircraft Corp., 663 S.W.2d 816, 818 (Tex.1984); see also Barr v. Resolution Trust Corp., 837 S.W.2d 627, 628 (Tex.1992) (stating that collateral estoppel "prevents relitigation of particular issues already resolved in a prior suit"). To determine whether this standard has been met, "a party must establish that (1) the facts sought to be litigated in the second action were fully and fairly litigated in the prior action, (2) those facts were essential to the judgment in the first case, and (3) the parties were cast as adversaries in the first action." Bonniwell, 663 S.W.2d at 818; see also Amica Mutual Insurance Co. v. Moak, 55 F.3d 1093, 1097 (5th Cir.1995) (quoting Bonniwell, 663 S.W.2d at 818). The Plaintiffs were adverse to Greenway in the state trial, and do not dispute that gross negligence was adequately litigated. Nor do the Plaintiffs dispute

that the facts sought to be litigated in the bankruptcy court were essential to the judgment in the state trial. Therefore, we must determine whether the jury's refusal to find gross negligence in the state trial necessarily determined that Greenway's conduct was not "willful and malicious" under § 523(a)(6) of the Bankruptcy Code. In the state court proceeding, gross negligence was defined to the jury as "such an entire want of care as to establish that the act or omission in question was the result of actual conscious indifference to the rights, welfare and safety of the persons affected thereby."[9] Conscious indifference is the salient element of gross negligence under Texas law. See Transportation Insurance Co. v. Moriel, 879 S.W.2d 10 (Tex.1994) (tracing development of Texas law on gross negligence). We have consistently defined "willful and malicious" under § 523(a)(6) of the Bankruptcy Code to mean "intentional" and lacking "just cause or excuse." See Garner, 56 F.3d at 681 (listing cases). Comparing Texas' standard for gross negligence with the language of § 523(a)(6), we agree with the district court that the jury's refusal to find that Greenway acted with "actual conscious indifference" necessarily precludes a subsequent finding that Greenway's actions were both "intentional" and without "just cause or excuse." Accordingly, we affirm the district court's holding that the Plaintiffs are

9 Pursuant to Texas law, the jury was asked in "Question 9," "Was such negligence by John Greenway gross negligence?" The jury answered, "No."

collaterally estopped from litigating whether Greenway's actions were willful and malicious under § 523(a)(6) of the Bankruptcy Code.

IV

We REVERSE the district court's order insofar as it includes motorboats within the term "motor vehicle" under § 523(a)(9) of the Bankruptcy Code, and we hold that § 523(a)(9) does not bar the discharge of Greenway's debt. We AFFIRM the district court's order insofar as it holds that Greenway's acquittal for gross negligence in his state jury trial collaterally estops the Plaintiffs from seeking to litigate whether Greenway's actions were "willful and malicious" under § 523(a)(6) of the Bankruptcy Code. Because neither of the exceptions at issue here disallows the discharge of Greenway's debt in bankruptcy, we RENDER judgment in favor of Greenway.

App. 12

In the Matter of John GREENWAY, Bankrupt.

Joanne Brito BOYCE, Eric Boyce, John Sommerfield, Terry Rock, Kay Rock, and Estate of Deborah Rock (Kay Rock, Representative)

v.

John GREENWAY.

Civ. No. A-94-CA-510 JN.

United States District Court,
W.D. Texas,
Austin Division.

April 11, 1995.

Creditors who had obtained state court judgment against debtor for wrongful death and personal injuries caused by debtor's operation of motor boat while intoxicated brought adversary proceeding to except resulting judgment debt from discharge. The United States Bankruptcy Court for the Western District of Texas granted debtor's motion for summary judgment, and judgment creditors appealed. The District Court, Nowlin, J., held that: (1) jury's finding in state court action that debtor was merely negligent and not grossly negligent in operating motor boat collaterally estopped judgment creditors from arguing that debtor acted "willfully and maliciously," but (2) motor boat qualified as "motor vehicle,"

within meaning of bankruptcy statute excepting from discharge any obligation arising out of death or personal injury caused by debtor's operation of "motor vehicle" while intoxicated.

Affirmed in part and reversed in part; case remanded.

ORDER AND JUDGMENT

NOWLIN, District Judge.

Before the Court is an appeal from an Order of the Bankruptcy Court granting summary judgment to Defendant John Greenway. Plaintiffs/Appellants filed their brief on September 9, 1994 and Defendant/Appellee filed his brief on September 26, 1994. After reviewing the arguments of counsel and the applicable law, the Court is of the opinion that the Bankruptcy Court's decision to grant summary judgment should be affirmed in part and reversed in part.

I. INTRODUCTION

The issue to be decided by this Court is whether the Bankruptcy Code discharges a debt that was incurred as a result of the debtor operating a motorboat while intoxicated. The Plaintiffs in this case obtained a judgment in state court against Defendant for wrongful death and personal injuries which occurred as a result of a motor-

boat collision. Although Plaintiffs alleged that Defendant was intoxicated at the time of the accident, the jury did not directly pass on the question of intoxication. The jury merely found the Defendant negligent and he was assigned 60% of the responsibility.

On October 25, 1993, Defendant filed for protection from the state court judgment under Chapter 7 of the bankruptcy laws. Plaintiffs then filed this adversary proceeding seeking a determination of non-dischargeability of the judgment under 11 U.S.C. 523(a)(6) & (9). On June 1, 1994, the bankruptcy judge granted summary judgment in favor of the Defendant and ordered that his judgment debt to the Plaintiffs be discharged. Plaintiffs have filed this appeal asking the Court to reverse the decision of the bankruptcy judge and remand this case for trial.

II. DISCUSSION

Under 11 U.S.C. 523 of the Bankruptcy Code, certain types of debts are excepted from the dischargeability of debt in bankruptcy. Plaintiffs argue that two of these exceptions apply and that the Defendant's judgment debt should not be discharged.

Plaintiffs first argue that the debt is not dischargeable under 11 U.S.C. 523(a)(6) because it is the result of a

willful and malicious injury. However, the jury in the state court matter found that the Defendant did not act with gross negligence in connection with the incident at issue. The Bankruptcy Court held that the parties were collaterally estopped from attacking the jury finding on this issue and concluded that Defendant "could not be said to have caused willful and malicious injury within the meaning of Section 523(a)(6) of the Code." After reviewing the record and the applicable law, the Court agrees and finds that the Bankruptcy Court's decision of this issue should be affirmed.

Plaintiffs next argue that, under 11 U.S.C. 523(a)(9), the debt is not dischargeable because it is a judgment based upon the alleged drunk driving of a motorboat. Under the Bankruptcy Code, a debt is not dischargeable if it is "for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol...." 11 U.S.C. 523(a)(9) (emphasis added).

The debt in the present case is for injuries sustained as a result of the Defendant's operation of a motorboat while allegedly intoxicated.[1] Therefore, the Court must determine two issues: (1) whether a motorboat qualifies as a motor vehicle under 523(a)(9) and (2) whether, at the

1 Although the jury found Defendant liable, they did not reach the issue of intoxication.

time of the incident in question, it was unlawful to operate a motorboat while intoxicated.

As to whether a motorboat qualifies as a "motor vehicle" under 523(a)(9), the only two reported cases dealing with the issue reached opposite conclusions. See Radivoj v. Williams (In re Williams), 101 B.R. 356 (Bankr.S.D.Fla.1989), aff'd, Williams v. Radivoj, 111 B.R. 361 (S.D.Fla.1989) (holding that a motorboat was a "motor vehicle" within the context of 523(a)(9)); Willison v. Race (In re Race), 159 B.R. 857 (Bankr.W.D.Mo.1993) (holding that a motorboat was not a "motor vehicle" within the context of 523(a)(9)). The split is primarily caused by Congress' failure to define the term "motor vehicle" in the Bankruptcy Code. Additionally, 523(a)(9) has practically no recorded legislative history and principles of statutory construction provide no clear guidance.[2] See Thomas v. Ganzer (In re Ganzer), 54 B.R. 75, 76 (Bankr.D.Minn.1985) ("11 U.S.C. 523(a)(9) was enacted without any reported legislative history.").

However, the policy behind 523(a)(9) is clear from the language of the statute and from what little legislative history exists. It was designed to provide "reforms in the law of bankruptcy as it treats claims against drunk drivers, to ensure that victims of the drunk driver do not

2 Although both sides present statutory construction arguments to support their position, the Court finds that neither is more persuasive than the other.

have their judgments against the drunk driver discharged in bankruptcy." Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub.L. No. 98-353, 1984 U.S.Code Cong. & Admin.News (98 Stat.) 587 (remarks of Senator Dole). The Court can see no reason why Congress would have been concerned with drunk driving in one context and not the other. The Court concludes that "Congress was concerned with the consequences of drunk driving, and not the means." Radivoj v. Williams (In re Williams), 111 B.R. 361, 362 (S.D.Fla.1989). Therefore, the Court finds that a motorboat is a "motor vehicle" within the meaning of 523(a)(9).

As to the second issue, the Bankruptcy Court found that it was lawful to operate a boat while intoxicated on the date of the incident. However, Plaintiffs have cited statutory authority which clearly shows that operating a motor boat while intoxicated was in fact illegal at the time of the incident. Defendant apparently concedes the issue because he did not address it in his brief. Therefore, the Court finds that it was unlawful to operate a boat while intoxicated at the time of the incident in question.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the decision of the Bankruptcy Court to enter a Summary Judgment in Favor of Defendant Greenway is AFFIRMED IN PART AND REVERSED IN PART and this case is hereby REMANDED to the Bankruptcy Court for trial.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE
JOHN W. GREENWAY — Case No. 93-12864
Debtor — Chapter 7

JOANNE BRITO BOYCE,
ERIC BOYCE,
JOHN E. SOMMERFIELD,
TERRENCE ROCK,
KAY ROCK, and
ESTATE OF DEBORAH ROCK
(KAY ROCK, REPRESENTATIVE),
Plaintiffs

v. — Adv. No. 94-1012-FM

JOHN W. GREENWAY,
Defendant

SUMMARY JUDGMENT IN FAVOR OF DEFENDANT GREENWAY

Came on for consideration the Motion of Defendant John Greenway for Summary Judgment in this nondischargeability matter;

The Court has considered the Motion and the Court has reviewed all pleadings and other items of record in this matter. For the reasons granted below, the Motion of Defendant Greenway is hereby GRANTED, and judg-

ment on all counts is determined in favor of Defendant Greenway.

Upon due consideration, the Court makes the following findings upon which this judgment is based, in accordance with Rules 7052 and 7056 of the Federal Rules of Bankruptcy Procedure:

1. In a prepetition state court matter, Travis County District Court Cause 475,857, Boyce, et al. v. Greenway, et al., ("the state court matter") a judgment was entered against Defendant Greenway and in favor of Plaintiffs, based upon a jury's verdict of negligence.

2. In the state court matter, the jury found that Greenway had not acted with Gross negligence in connection with the incident at issue in this case involving Plaintiffs. As a consequence, and as a matter of law, Defendant Greenway could not be said to have caused willful and malicious injury within the meaning of Section 523(a)(6) of the Code. This Court and the parties are collaterally estopped from attacking the jury finding on this issue, and the jury's finding will therefore apply in this case in such a manner that all claims by Plaintiffs of nondischargeability under section 523(a)(6) are denied, and Greenway's motion for summary judgment under 523(a)(6) is therefore hereby granted.

3. The Court further finds that it is undisputed that Defendant operated a motorboat on the date of the incident upon which the state court judgment was based. Accordingly, this Court determines that a motorboat is

not a motor vehicle within the meaning of Code Section 523(a)(9).

4. The court further finds that it was not unlawful in Texas, on June 30, 1989, the undisputed date of the incident upon which the state court matter Judgment was entered to operate a boat while intoxicated. As a result, Code Section 523(a)(9) does not apply in this case.

5. And for the other reasons stated on the record at a hearing; it is accordingly the judgment entered against John Greenway in Cause 475,857, in the matter of Boyce et al. v. Greenway, et al., is hereby declared DISCHARGED AND DISCHARGEABLE. The Order of Discharge previously entered in this bankruptcy case, (number 93-12864-FRM), shall therefore include as dischargeable debts, all claims that were or could have been asserted by the Plaintiffs against Defendant in this adversary matter.

Dated this 1st day of June, 1994.

/s/ Frank R. Monroe
FRANK R. MONROE
UNITED STATES BANKRUPTCY COURT